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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 436

HUMBLE OIL & REFINING COMPANY AND ROY MOSELEY, *Petitioners*

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinions of the Court of Appeals (R. 335-343) are reported at 198 F. 2d 753.

JURISDICTION

The judgments of the Court of Appeals were entered on July 31, 1952, and a joint petition for a rehearing was denied on October 6, 1952 (R. 343-345). The petition for a writ of certiorari was filed on November 3, 1952. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). See also Rules 37(b)(2) and 45(a), F.R. Crim. P.

QUESTION PRESENTED

Whether the fact that the trial court found that orders limiting production from individual fields, leases or wells were invalidly issued under the New Mexico statute relieves petitioners from criminal liability for failure to keep accurate records as prescribed by the Federal Petroleum Board under the Connally Act.

STATUTES AND REGULATIONS INVOLVED

The Connally Act, February 22, 1935, c. 18, 49 Stat. 30 (15 U.S.C. 715) provides in pertinent part:

> [SEC. 1] * * * it is hereby declared to be the policy of Congress to protect interestate and foreign commerce from the diversion and obstruction of, and the burden and harmful effect upon, such commerce caused by contraband oil as herein defined, and to encourage the conservation of deposits of crude oil situated within the United States.
>
> SEC. 2. As used in this Act—
>
> (1) The term "contraband oil" means petroleum which, or any constituent part of which, was produced, transported, or withdrawn from storage in excess of the amounts permitted to be produced, transported, or

withdrawn from storage under the laws of a State or under any regulation or order prescribed thereunder by any board, commission, officer, or other duly authorized agency of such State, or any of the products of such petroleum.

* * *

SEC. 3. The shipment or transportation in interstate commerce from any State of contraband oil produced in such State is hereby prohibited. For the purposes of this section contraband oil shall not be deemed to have been produced in a State if none of the petroleum constituting such contraband oil, or from which it was produced or derived, was produced, transported, or withdrawn from storage in excess of the amounts permitted to be produced, transported, or withdrawn from storage under the laws of such State or under any regulation or order prescribed thereunder by any board, commission, officer, or other duly authorized agency of such State.

* * *

SEC. 5. (a) The President shall prescribe such regulations as he finds necessary or appropriate for the enforcement of the provisions of this Act, including but not limited to regulations requiring reports, maps, affidavits, and other documents relating to the production, storage, refining, processing, transporting, or handling of petroleum and petroleum products, and providing for the keeping of books and records, and for the inspection of such books and records and of properties and facilities.

* * *

SEC. 6. Any person knowingly violating any provision of this Act or any regulation prescribed thereunder shall upon conviction be punished by a fine of not to exceed $2,000 or by imprisonment for not to exceed six months, or by both such fine and imprisonment.

The regulations issued pursuant to the Connally Act provide in pertinent part (30 C.F.R. § 302 (1949 ed.)):

§ 302.1 *Designated areas.* Until further order, the regulations in this part shall be applicable only to that part of the State of New Mexico included within the counties of

Lea and Eddy, to that part of the State of Texas included within the counties of:

* * *

§ 302.6 *Records.* From the effective date of this part the following records shall be made and retained accurately and completely showing the following facts with respect to production, refining, processing, manufacturing, transporting, withdrawing or otherwise handling petroleum or petroleum products in the designated area: *Provided,* That when such records have been retained for a period of not less than 3 years the board may, upon written request of the operator, grant permission to destroy or dispose of such records:

(a) By producers:

(1) *Location, wells, allowable production.* The location of the producing properties, the number and location of wells thereon, and the allowable production for each property and well as prescribed by the proper State agency.

(2) *Inventories.* An opening and closing inventory of the crude petroleum on hand each 24-hour day.

(3) *Production.* The daily production in barrels of petroleum produced from each lease and well (ascertained by the application of acceptable operating practice as to wells which are produced into common tankage and

of which no separate daily gauge is made), with a notation of the allowance made for basic sediment and water, and the tanks, identified by number and location into which the petroleum is run.

(4) *Consumption.* The amount of petroleum consumed upon each property daily.

(5) *Deliveries.* A daily record of all deliveries of petroleum or petroleum products, showing the names and places of business of all persons to whom such petroleum or petroleum products are delivered, whether purchasers, consignees or transporting agencies, the quantity involved in each delivery, transportation or other disposition, the identity of the means of transportation by which the petroleum or products are removed.

(6) *Tickets.* Gauge tickets, and run tickets, as made by the employees actually performing or observing the operations to which such records relate.

STATEMENT

Petitioners were convicted in the United States District Court for the District of New Mexico on a number of counts (18-26) charging them with failure to make and keep accurate daily records of the production and delivery of oil from certain named leases as required by regulations (30

C.F.R., § 302, *supra*, pp. 5-6) promulgated under the Connally Act (R. 31-35, 52).[1]

Petitioner Humble Oil was sentenced to pay a $2,000 fine under count 18 and $1,000 on each of counts 19-26, making a total fine of $10,000. For petitioner Moseley, the sentence was a $2,000 fine under count 18 and sentence was suspended on the remaining counts. (R. 56-57.) On appeal (R. 58-59) the convictions were unanimously affirmed (R. 343).

Prior to the trial, petitioners filed motions to suppress certain rules, regulations and orders of the New Mexico Oil Conservation Commission (hereinafter called the Commission), based principally upon the ground that they were promulgated without the notice and hearing prescribed by New Mexico statutes (R. 40-43). At a hearing on this motion the evidence disclosed a course of procedure substantially as follows:

At the first meeting of the Commission on May 28, 1935, one Staley, chairman of the engineer sub-

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[1] Counts 2-17 charging violations of the Connally Act by transporting in interstate commerce contraband oil (R. 20-31) were dismissed by the court before trial (R. 109) on the ground that no valid order had ever been made by the State Oil Commission fixing any allowable for a field, pool, or individual well (R. 111). Petitioners were acquitted of the conspiracy charged in a second indictment which was consolidated with the instant one for trial (R. 302-315, 52), in accordance with the trial court's order to make an election as to conspiracy charged in count 1 of the instant indictment (R. 185).

committee of the Lea County operators, was appointed as deputy of the Commission, at a salary of $1 per year and traveling expenses, and this appointment had never been revoked (R. 69-70, 89, 227). Pursuant to notice and hearing the Commission adopted state-wide proration orders prescribing the formula by which the monthly proration schedules for the daily allowable for oil production in each field, pool, and well were to be calculated (R. 72, 73, 80, 81; Def. Ex. 25, R. 223-224; Def. Ex. 26, R. 225-227; Def. Ex. 33, R. 246-250; Def. unnumbered Exhibit, R. 269).

Thereafter the Commission met once a month, and after considering principally the market demand, fixed the total daily allowable production for the State of New Mexico (Def. Ex. 1-24, R. 192-223). Each month a letter was addressed by the Commission to Staley, advising him of the Commission's action (R. 64-65, 66; Def. Ex. 1-24, R. 192-223). After receiving this information, Staley, using facilities of the operators' committee, computed the daily field, pool, and well allowables and prepared a monthly proration schedule. This was distributed to the operators and a copy was mailed to the Commission office in Santa Fe. (R. 64-65, 71, 91, 92-93.) The monthly schedules designated the state-wide proration order under which they had been prepared (R. 70, 72, 80-81, 92).

Staley used the formula designated in the statewide proration orders and other required information taken from the monthly reports submitted by the operators, in figuring the monthly schedules of daily allowables. His computations required only a mathematical calculation as an employee of the Commission, it being a function which any person having access to the formula and the necessary information could perform. (R. 80-81, 83-84, 85, 93-94, 95, 96-97.)

Before fixing the allowables for the various months, for the period from February 1948 to January 1950, the Commission did not prescribe a time and place for a hearing (R. 66-68). Under a new order of the Commission effective January 1, 1950, it was provided that notice by publication of the exact date, time, and place of the Commission's monthly meetings to set the allowable production should be made on or before January 10th of each year (R. 86, 253, 255).

At the close of the testimony on the motion to suppress, the court ordered the suppression of the monthly schedules allocating local production prepared by Staley on the ground that these were not valid orders of the Commission (R. 43-44, 102-103, 111). However, the court denied the motion to suppress as to the state-wide proration orders and the monthly orders of the Commission fixing the total daily allowable for the State. The court also upheld the constitutionality of the New Mexico

Conservation Act and the validity of the creation of the Commission. (R. 102-104, 111, 114.)

Petitioners then filed motions to dismiss on the ground that, since there were no valid Commission orders for monthly allowables as to the leases involved, there could be no contraband oil and therefore the Connally Act and regulations issued pursuant thereto would be ineffective (R. 44-51). The court sustained these motions as to counts 2-17, but dismissed them as to the others (R. 109-112).

Petitioners do not challenge the sufficiency of the evidence to support their conviction on such counts charging failure to keep accurate records as required by the Petroleum Board under the authority conferred by the Connally Act.

ARGUMENT

1. Petitioners contend that, since the trial court found that the New Mexico Commission had made no valid orders limiting individual production, no part of the Connally Act or the regulations issued thereunder, not even the record-keeping requirements, could apply to their operations. Hence, they argue, they cannot be held liable for failure to keep accurate records as required by the Petroleum Board, even though they did purport to comply with such regulations.

Petitioners do not, however, deny that New Mexico had passed a valid conservation law (New Mexico Statutes (1941), c. 69, §§ 201-232) which gave an Oil Conservation Commission jurisdiction

and authority over all matters relating to the conservation of oil and gas (§ 4), specifically including the power and duty to regulate the production of crude petroleum to prevent waste by overproduction (§§ 2c, 11, 12, 13). They do not deny that the Oil Commission had been acting under that statute for fifteen years without challenge. They do not even contest the validity of the state-wide orders for the period after 1950.

Under these circumstances, we think it is clear, as the court below unanimously held (R. 339), that "New Mexico was a state in which conservation and proration were an established policy and by its specific provisions the Connally Act applied to New Mexico." In view of New Mexico's clearly enunciated policy of prorating oil, the Federal Petroleum Board acting under a statute designed to aid state regulation, had authority to require accurate information to assist in enforcement of the federal statute designed to prevent use of interstate commerce in violation of state policies. The power conferred on the President by section 5(a) to require oil producers to make and keep records and file reports[2] is not limited to reports as to interstate shipments. See *President of the United States* v. *Skeen*, 118 F. 2d

[2] This power has been delegated to the Federal Petroleum Board. Executive Order No. 7756, Dec. 1, 1937 (30 C.F.R. 401.1, 1938 ed.) as amended by Executive Order No. 9732, June 3, 1946 (30 C.F.R. ch. 4, 1946 Supp.).

58 (C.A. 5), holding that the predecessor of the Federal Petroleum Board, having a duty to enforce the Connally Act, could require reports of all oil producers operating under its jurisdiction regardless of whether they were engaged in interstate commerce. The President has been given power to prescribe "such regulations as he finds necessary or appropriate for the enforcement of the provisions of this Act." Assuming the invalidity of the New Mexico orders to the full extent claimed by petitioners, the federal record-keeping regulations are still appropriate to the enforcement of the Connally Act in relation to such shipments as New Mexico could validly ban under its declared policy, whether or not New Mexico had actually already validly done so.

Moreover, the area designated in the regulation here involved was certain counties in New Mexico and Texas. 30 C.F.R. 302.1 (1949 ed.), *supra*, pp. 4-5. Much of the oil produced in New Mexico is carried by pipeline into the state of Texas where it is refined and again distributed in interstate commerce. Since Texas has a valid system of oil conservation and proration,[3] the Petroleum Board, charged with the duty of enforcing the Connally Act as to Texas, could appropriately require reports of adjacent New Mexico production. It is

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[3] *Railroad Commission of Texas* v. *Rowan and Nichols Oil Co.*, 310 U.S. 573; *Danciger Oil and Refining Co.* v. *Railroad Commission*, 49 S.W. 2d 837, reversed and dismissed as moot, 122 Texas 243, 56 S.W. 2d 1075.

well settled that commissions and boards may require information reports and records of non-regulated business activities in order that they may properly regulate matters under their jurisdiction. *Interstate Commerce Commission* v. *Goodrich Transit Co.*, 224 U.S. 194, 211; *United States* v. *Darby Lumber Co.*, 312 U.S. 100, 121; *Currin* v. *Wallace*, 306 U.S. 1, 11.[4]

2. The convictions may also be upheld on the alternative ground given by Judge Huxman below, *viz.*, that since petitioners treated the individual proration orders as binding and continuously kept records required by the regulations under the Connally Act, they could not assert the invalidity of these regulations as a defense to an indictment for keeping inaccurate records (R. 339-341).

Petitioners do not contend that they did not keep the records required; and neither do they suggest that they were not inaccurate and false. For a number of years they purported to comply

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[4] Since, as we have shown, the validity of the record-keeping requirements does not depend on the validity of specific orders of the New Mexico Commission, it is immaterial that no order of the Commission allocating production was introduced in evidence at the trial (see Pet. 33).

Moreover, the issue of whether the record-keeping regulations were applicable to New Mexico so that petitioners could validly be charged with failure to comply therewith was obviously an issue of law for the court. The only issue for the jury was whether petitioners did or did not keep the required records accurately. The state proration orders had no relevance to that issue.

with the state and federal regulations, and it was not until this prosecution that they gave any intimation that they considered the New Mexico oil conservation system and the Federal Petroleum Board regulations of no effect (R. 152, 153, 179).

The situation is analogous to the following cases: *United States* v. *Kapp,* 302 U.S. 214, 217-218.[5] [accused charged with conspiracy to defraud United States by false statements to Secretary of Agriculture under Agricultural Adjustment Act and its regulations could not defend on ground that statute was unconstitutional]; *Kay* v. *United States,* 303 U.S. 1, 6-7 [mortgagee charged with making false representations to influence action of Home Owners' Loan Corporation could not defend upon ground that government operations under Home Owners' Loan Act might be unconstitutional]; *United States* v. *Meyer,* 140 F. 2d 652, 654, 655 (C.A. 2) [accused convicted of making false statement to exclusion board in military area established under Executive Order could not raise question whether board was validly constituted tribunal, where Executive Order, public proclamations, and rules for exclusion proceedings vested board with ample colorable authority]; *United States* v. *Rubinstein,* 166 F. 2d 249, 254 (C.A. 2),

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[5] See also as to perjury *United States* v. *Williams,* 341 U.S. 58, 68; *Blair* v. *United States,* 250 U.S. 273, 282; *Boehm* v. *United States,* 123 F. 2d 791, 809 (C.A. 8), certiorari denied, 315 U.S. 800.

certiorari denied, 333 U.S. 868 [false statements by alleged non-resident alien regarding possible liability for military service constituted crime under Selective Service Act, even if he were not subject to Act and draft board could not have required him to make any statements at all].

Appellants do not stand convicted of filing false statements or reports to the Federal Petroleum Board in violation of 18 U.S.C. § 1001, but of knowingly violating regulations of the Board by failing to keep and make accurate and correct daily production records. But it is undisputed that they kept records which purported to be the records prescribed under the regulations and that these records were materially inaccurate, false, and misleading. These records were open to inspection and examination by the Federal Petroleum Board and were in fact used by petitioners as a basis for other reports which they filed with the Federal Petroleum Board in Texas (R. 122-130).

The principle involved in the cases cited and in the instant case is the same. It is the right of the Government and its agencies to truthful and accurate information from those who deal with it. Once the appellants undertook to comply with the regulation and to keep the records prescribed, they were under the obligation to keep accurate and correct records, and to refrain from any deception in that respect. The Government agency involved is protected from improper conduct in the keeping

of the records regardless of whether it initially had the right to insist upon the records being kept. The issue is simple: appellants having purported to comply are compelled to deal fairly and truthfully in so doing. If they do not, they are responsible as wrongdoers.

CONCLUSION

The case was decided on settled legal principles and no conflict is involved. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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